Department of Justice

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STATEMENT OF ASSISTANT ATTORNEY GENERAL R. HEWITT PATE REGARDING THE DEPARTMENT'S FILING TODAY IN THE MICROSOFT CASE

WASHINGTON, D.C. - R. Hewitt Pate, Assistant Attorney General in charge of the Department's Antitrust Division, issued the following statement today after the Department filed its brief in the U.S. Courts of Appeals for the District of Columbia Circuit in case 03-5030, United States of America, Appellee v. Microsoft Corporation, Appellee, Computer and Communications Industry Association and Software & Information Industry Association, Appellants:

"The Microsoft settlement is in the public interest and the Department remains committed to actively enforcing its terms. As today's brief explains, the District Court properly rejected CCIA and SIIA's attempt to intervene in this case. Following painstaking review of the record, the District Court correctly found that the Department fully complied with the Tunney Act procedures, and that the settlement was in the public interest."

BACKGROUND

- Today's brief is filed in the appeal of the District Court's January 11, 2003, order denying the attempt by two non-parties, CCIA and SIIA, to intervene in the Department's case in order to appeal the court's approval of the settlement. Under the District Court's intervention decision, the two trade groups cannot appeal the District Court's decisions that the Department complied with the Tunney Act and that the settlement is in the public interest. The trade groups are appealing this intervention decision, and have no standing to appeal the merits of the settlement unless the District Court is found to have abused its discretion in denying intervention.

- In its brief, the Department shows that the District Court properly rejected CCIA and SIIA's motion to intervene for purposes of appeal. Although their arguments on the merits are not properly before the court, the Department's brief addresses them, and demonstrates that the United States complied with the Tunney Act procedures and that the District Court properly found that entry of the settlement was in the public interest.

- On March 26, 2003, the D.C. Circuit issued an order limiting the Department and Microsoft, who are both appellees in this appeal but were adverse parties in the government's antitrust case, to a total of 14,000 words in their separate briefs. The Department had limited space to address both the intervention issue-the only issue properly before the court-and the trade groups' various attacks on the settlement.

Appellants, CCIA and SIIA acting jointly, had 14,000 words for their opening brief and filed a single brief.

- Also in its March 26, 2003 order, the D.C. Circuit ordered that the parties file their briefs not only in the usual form, but also on CD-Rom with all citations to the record, filings, and other briefs "hyperlinked" so that a click on any cite will immediately take the reader to the original source. The issue before the Court, whether on intervention or on the merits, is whether the record supports what the District Court did. The use of CD-ROM filing with hyperlinking makes that record more readily available to the Court than it would otherwise be.

- CCIA and SIIA's reply brief, limited to 7,000 words, is due to be filed on or before July 16, 2003. Oral argument, to be heard *en banc*, has been set for November 4, 2003.

- The Department is not a party to the State of Massachusetts's appeal of the District Court's November 1, 2002 decision denying the vast majority of the remedies sought by Massachusetts, eight other states, and the District of Columbia. The Massachusetts appeal and the CCIA/SIIA appeals are separate appeals with separate briefing, and the Department has not filed a brief in the Massachusetts case. The two appeals are, however, being briefed on the same schedule and will be heard on the same day.

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